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LEGAL PRACTICES AND REGULATORY FRAMEWORKS IN AFRICA: A CIVIC SPACE EMERGENCY

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About WACSI

The West Africa Civil Society Institute (WACSI) was created by the Open Society Initiative for West Africa (OSIWA) to reinforce the institutional and operational capacities of civil society in the region. WACSI also serves as a resource centre for training, research and documentation, experience sharing and political dialogue for CSOs in West Africa.

About WACSERIES

WACSeries are analytical periodic write-ups on topical themes and issues relevant to West Africa. These write-ups provide experts, researchers and practitioners a space to reflect, analyse and posit views and recommendations on emerging issues and debates.

The WACSeries Op-Eds are thought provoking and intellectually engaging write-ups that provide critical reflections and analysis of issues relevant to civil society and development in West Africa.

Objectives of WACSERIES

- To raise awareness on key issues in West Africa;
- To generate debates and discussions on these issues;
- To proffer recommendations on civil society involvement in advocacy;
- To provide recommendations to policy makers.

Legal Practices and Regulatory Frameworks In Africa: A Civic Space Emergency

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In the last two decades, civil society has made significant strides in giving communities a voice to challenge governments and be involved in governance processes. The 2011 Arab-Spring, a by-product of such process proved effective and sustainable in toppling tyranny in North Africa. The observable trend has been that the contribution and participation of civil society both in the implementation of their mandate and in the digital space is heavily restricted as a result of government interference, persecution and retaliation. This has resulted in the forced suspension of civil society organisations, unwarranted raids, shut down and the arrest of human rights activists such as Bobi Wine of Uganda and members of the Zimbabwe Congress of Trade Unions of Zimbabwe.



Across the globe, governments are putting in place repressive legal frameworks to control the operations of civil society thereby gagging civil society voices. Efforts by some governments to interfere and limit the operations of civil society have been greatly hampered by organisations taking worthy actions to hold institutions to account and promoting transparency; raising awareness of societal issues; delivering services to meet education, health, food and security needs; implementing disaster management, preparedness and emergency response programmes; bringing expert knowledge and experience to shape policy and strategy; giving power to the marginalised; and encouraging citizen engagement.

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Current Trends

The growing need for civil society operations in Africa cannot be denied. This is required to counter several decisions and actions by governments that violate human rights. The trend has been concerted efforts by governments to interfere and limit the scope of work of civil society. This has been the case in Zimbabwe, Tanzania, Burundi, Zambia, Sudan, Mozambique, Somalia and Eritrea where response to civic participation is rated as unfavourable; either being obstructed, repressed or closed CIVICUS. The Ibrahim Index of African Governance (IIAG) shows a decline in civil society participation over the last ten years. In 2008 participation was at 55.5 percentile. In 2012 civil society participation increased to 57.2 percentile which further declined to 55.1 percentile in 2017. Between 2008 and 2017 there has been a -0.4 percentile decrease. Between 2013 and 2017 there has been a sharp decrease of 2.0 percentile. This trend is worrisome and calls for an action plan which counters the concerted efforts by governments.

In Zimbabwe, the Public Order and Security Act of 2002 (POSA) and the Access to Information and Protection of Privacy Act of 2003 (AIPPA) have been used to intimidate, detain and arrest many human rights defenders, activists and human rights institutions. In March 2019, Community Tolerance Reconciliation and Development (COTRAD), a youth oriented NGO was suspended on the grounds that it had failed to meet registration requirements and were engaging in political activities. This has evoked much distrust against the government and it is feared that this might be another attempt to close the civic space in Zimbabwe and also a repeat of 2012 events where twenty-nine organisations operating in the same province were suspended on baseless grounds.

Further, in 2018 the Burundi government suspended the operations of NGOs for three months on the basis that they were not complying with the law. There was also a crackdown on journalists and the media in efforts to limit freedom of expression.

This resulted in the indefinite suspension of broadcasts by the Voice of America (VOA) and the government also revoked the operating license of the British Broadcasting Corporation (BBC). The government of Tanzania has also interfered with the work of civil society organisations. In 2018 the East African Court of Justice made a ruling that multiple sections of the Media Services Act restricted press freedom and freedom of expression and called on the Tanzanian government to repeal the Act. In Mozambique the government continues to intimidate and harass civil society actors. Amade Abubaca, a journalist was arbitrarily arrested.

At the time of the arrest he was interviewing people who fled their homes due to intensification of violent attacks carried out by individuals believed to be members of an extremist group. The police handed him over to the military who took him to a detention facility in Mueda district, where he was held incommunicado for 12 days. While in military incommunicado detention, Amade was allegedly subjected to different forms of ill-treatment, which may amount to torture. On 25 January, Amade told representatives of the Mozambican Bar Association that military officers violently shook his body several times and forced him to sleep handcuffed. He also confirmed he had been deprived of food for a few days.

It is apparent that civic space is continuously under attack by governments and there is need to pave a way forward and strategise for an enabling environment for the work of civil society to thrive.

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A digital civic space emergency

Civil society has traditionally played the role of holding governments accountable hence promoting governments' compliance with human rights protocols. This is mostly through calling out the government for human rights violations and non-compliance with democratic principles. Draconian laws restricting digital freedom in many African counties has meant that civil society participation and contributions to issues on governance, human rights, rule of law and democracy has been limited. Civil society is therefore being restricted to only report and criticise on issues that will not result in their offices being raided, their status as organisations being revoked or their persecution.

In Zimbabwe, the Interception of Communications Act (ICA) of 2007 gives the Zimbabwean Government significant powers of surveillance over the communications of its citizens. Similarly, Zambia's laws restrict on media freedom and freedom of expression. The 1930 Penal Code, NGOs Act, independent Broadcasting Act and the proposed Cyber Crime all shrink civic space in Zambia.

According to the long title of the Interception of Communications Act, the aim of this legislation is to allow both the "interception" and "monitoring" of communications.

Of course, both "interception" and "monitoring" are acts of surveillance, which infringe on the rights of an individual to communicate with others without interference from the state, the right to information, privacy and freedom of expression. The Public Order and Security Act (POSA) also restricts the right to association and movement. According to this Act, meetings of a "political nature" ought to get prior authorisation from the Zimbabwe Republic Police (which has been used by the government to violently crack down on citizens).

The International Federation for Human Rights (FIDH) has noted that the Act unreasonably and unjustifiably encroaches on the rights of individuals and groups to exercise their rights to freedom of assembly and association.

Like POSA, AIPPA equally is a state draconian law which restricts the accreditation of journalists in Zimbabwe only allowing state-controlled media bodies to have monopoly of the digital space. Bodies such as the Media and Information Commission of Zimbabwe has, for years thwarted media freedom and has only accredited state controlled media and digital spaces such as ZimPapers Publishers which is the main media publishing house for news platforms such as newspapers in Zimbabwe.

The declining economic situation in Zimbabwe has resulted in a deterioration in human rights protection efforts by the government. Two recent events in Zimbabwe, the 1 August 2018 and 14-17 January 2019 violent crackdown by the government on protesting civilians is a clear indication that a strengthened civil society and an open civic space are urgently required. This is further exacerbated by the fact that the extra-judicial killings, sexual assault and other human rights violations cases that were committed during this period have not been punished.

Diplomatic advocacy has only silenced civil society in Zimbabwe. The government has a strong hold on civil society. It has the machinery to control the actions of civil society through enforcement bodies such as the Zimbabwe Republic Police, the Zimbabwe National Army and the Central Intelligence Office. This is also the same situation in the digital space through state regulated platforms. The internet presence of civil society is surveilled such that only material that is not considered by the government as being 'too sensitive' and 'damaging' is allowed in the public domain.

There is therefore a need to address the challenges of safe, ethical and effective digital data governance or practice which has paralysed many civil society organisations and associations in Africa. The restrictions on the operations of civil society usually intensify during election periods. This persists, despite the fact that many African governments have committed to uphold human rights and also regional standards for good governance. This is a serious setback on the progress that the continent has achieved particularly for states moving towards and committing to good governance and democratic practices. Some countries have deliberately discarded having laws that clearly protect freedoms of speech, expression and assembly. However, most countries in Africa have Constitutions that comply with the African Charter on Human and Peoples' Rights and are premised on the administration of the country on the principles of good governance and democracy. This provides enough justification required to hold governments accountable for their actions that contribute towards shrinking civic space.



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Plan of Action: Innovative shadow reporting database for civil society in Africa

A radical, robust and holistic approach is required to be able to expand civic space in Africa and ensure that it is not further closed by governments. Innovation is key. Harnessing the gains of technology is very essential in ensuring that civic space is expanded. Technology is also efficient in discharging civil society's primary mandates which are influencing policy change and holding governments accountable.

In the digital space, it is important to establish that a system that bypasses existing civic space restrictions. The development of an innovative shadow reporting database is a creative way of bypassing state surveillance and interference in the operations of civil society organisations. This database will be an open access, anonymous and online platform. It will increase and coordinate actionable insights from shadow reporting. This will protect civil society in Africa from governments' interference, surveillance and persecution as the database will be operated through civil society coalitions working to promote human rights, rule of law and democracy.

By contributing to the shadow reporting database to hold governments accountable for human rights violations, there will be more meaningful participation and collaboration among civil society organi-

sations. Contributors to the database will draft and produce alternative human rights, rule of law and democracy reports, commentaries, judgments and analysis etc. distinct from the outputs made available to the public through state-controlled media

Efforts will also focus on raising awareness on government's shortfalls vis-à-vis human rights protocols they have ratified. This will address the challenge that all civil society organisations face in delivering their role in promoting the protection of human rights. The success of this project will create a new landscape in African civic space. There will be a secured and credible digital space that respects the right to access information, freedom of expression and speech and freedom of assembly.

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Conclusion

Advocacy models adopted by civil society have remained heavily dependent on traditional methods such as capacity building mechanisms and diplomatic negotiations and lobbying with governments. As shown in this discussion, this has immediate limitations and usually does not yield the desired outputs. It is time that governments in Africa realise that where citizens are persecuted for exercising their rights and speaking out, citizens become discontented such that they resent their government. The aim of governments should be to achieve national pride by protecting and promoting human rights.

There is need for concerted efforts by civil society to document trends across the continent. This will enable a holistic overview of the state of civic space and progress/regressions made over the years that can inform better policy actions. The IIAG shows that there is an increasing deterioration in civil society participation not only in West Africa but across the continent. There is therefore a growing need for civil society organisations in Africa to adopt creative and innovative ideas to expand civic space.

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Strengthening Civil Society

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